

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

)
United States of America,) File No. 21-cr-108
) (PAM/TNL)
Plaintiff,)
)
v.)
)
Tou Thao(2),) Courtroom 7D
J. Alexander Kueng(3), and) St. Paul, Minnesota
Thomas Kiernan Lane(4),) Wednesday February 23, 2022
) 9:06 a.m.
Defendants.)

BEFORE THE HONORABLE PAUL A. MAGNUSON
UNITED STATES DISTRICT COURT SENIOR JUDGE

(JURY TRIAL PROCEEDINGS - VOLUME XXI)

Proceedings recorded by mechanical stenography;
transcript produced by computer.

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IN OPEN COURT**(JURY PRESENT)**

THE COURT: Good morning, everyone, and welcome back. People got through the greasy-skid stuff this morning and here we are. It's a good thing it's Minnesota; we're used to it.

Okay. Members of the jury, the instructions that I gave you at the beginning of the trial and during the trial remain in effect. And I'll give you some additional instructions.

You must, of course, continue to follow the instructions that I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of the trial or during the trial are not repeated here.

The instructions that I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean that they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the

1 law, even if you thought the law was different or should be
2 different.

3 Do not allow sympathy or prejudice to influence
4 you. The law demands of you a just verdict, unaffected by
5 anything except the evidence, your common sense and the law
6 as I give it to you.

7 Now I mentioned the word "evidence." The
8 "evidence" in the case consists of the testimony of the
9 witnesses, the documents and other things received as
10 exhibits, the facts that have been stipulated, that is,
11 formally agreed to by the parties.

12 You may use reason and common sense to draw
13 deductions or conclusions from facts which have been
14 established by the evidence in the case.

15 Certain things are not evidence. I'll list those
16 things again for you now.

17 1. Statements, arguments, questions and comments
18 by lawyers representing the parties in the case are not
19 evidence.

20 2. Objections are not evidence. Lawyers have a
21 right to object when they believe something is improper, and
22 you should not be influenced by the objection. If I
23 sustained an objection to a question, you must ignore the
24 question and must not try to guess what the answer might
25 have been.

1 3. Testimony that I struck from the record or
2 told you to disregard is not evidence and must not be
3 considered.

4 4. Anything you saw or heard about the case
5 outside of the courtroom is not evidence.

6 Finally, if you were instructed that some evidence
7 was received for a limited purpose only, you must follow
8 that instruction.

9 Now, some of you may have heard the terms "direct
10 evidence" and "circumstantial evidence." You are instructed
11 that you should not be concerned with those terms. The law
12 makes no distinction between direct and circumstantial
13 evidence. You should give all evidence the weight and value
14 you believe it is entitled to receive.

15 In deciding what the facts are, you may have to
16 decide what testimony you believe and what testimony you do
17 not believe. You may believe all of what a witness said or
18 only part of it or none of it.

19 The deciding -- in deciding what testimony you
20 believe, consider the witness's intelligence, the
21 opportunity the witness had to have seen or heard things
22 testified about, the witness's memory, any motives that
23 witness may have for testifying a certain way, the manner of
24 the witness while testifying and whether that witness said
25 something different at an earlier time, the general

1 reasonableness of the testimony and the extent to which the
2 testimony is consistent with any evidence that you believe.

3 In deciding whether or not to believe a witness,
4 keep in mind that people sometimes hear or see things
5 differently and sometimes forget things. You need to
6 consider therefore whether a contradiction is an innocent
7 misrecollection or a lapse of memory or an intentional
8 falsehood, and that may depend on whether it has to do with
9 an important fact or only a small detail.

10 You should judge the testimony of the defendants
11 in the same manner as you judge the testimony of any other
12 witness.

13 The testimony of a witness may be discredited or,
14 as we sometimes say, impeached by showing that he previously
15 made statements which are different than or inconsistent
16 with his or her testimony here in court. The earlier
17 inconsistent or contradictory statements are admissible only
18 to discredit or impeach the credibility of the witness and
19 not to establish the truth of those earlier statements made
20 somewhere other than here during this trial. It is the
21 province of the jury to determine the credibility of a
22 witness who has made prior inconsistent or contradictory
23 statements.

24 If a person is shown to have knowingly testified
25 falsely concerning any important or material matter, you

1 obviously have a right to distrust the testimony of such an
2 individual concerning other matters. You may reject all of
3 the testimony of that witness or give it such weight or
4 credibility as you may think it deserves.

5 Now, you've heard testimony from persons described
6 as experts. Persons who, by knowledge, skill, training,
7 education or experience, have become expert in some field
8 may state their opinions on matters in that field and may
9 also state the reasons for their opinions.

10 Expert testimony should be considered just like
11 any other testimony. You may accept it or reject it and
12 give it as much weight as you think it deserves, considering
13 the witness's education and experience, the soundness of the
14 reasons given for the opinion, the acceptability of the
15 methods used and all other evidence in the case.

16 The government and the defendants have stipulated,
17 that is, they have agreed, that certain facts are as counsel
18 have stated. You should therefore treat those facts as
19 having been proved.

20 The indictment in this case charges two different
21 crimes. There is no Count 1 of this indictment.

22 Count 2 charges the defendants Tou Thao and
23 J. Alexander Kueng deprived George Floyd of his right to be
24 free of unreasonable seizure. Specifically, Count 2 alleges
25 that Defendants Thao and Kueng willfully failed to intervene

1 to stop Mr. Chauvin's use of unreasonable force. Count 2
2 charges that this offense resulted in bodily injury to and
3 the death of George Floyd.

4 Count 3 charges that defendants Tou Thao,
5 J. Alexander Kueng and Thomas Kiernan Lane deprived George
6 Floyd of his right to be free of deliberate indifference to
7 his serious medical needs. Specifically, Count 3 alleges
8 that defendants saw George Floyd lying on the ground in
9 clear need of medical care and willfully failed to aid
10 Mr. Floyd, thereby acting with deliberate indifference to a
11 substantial risk of harm to Mr. Floyd. Count 3 charges that
12 this offense resulted in bodily injury to and the death of
13 George Floyd.

14 Each defendant has pled not guilty to each of
15 these charges.

16 The indictment is simply the document that
17 formally charges the defendants with the crimes for which
18 they are on trial. The indictment is not evidence. At the
19 beginning of the trial I instructed you that you must
20 presume the defendants to be innocent. Thus, the defendants
21 began the trial with a clean slate, with no evidence against
22 them.

23 The presumption of innocence alone is sufficient
24 to find each defendant not guilty of each count. This
25 presumption can be overcome as to each charge only if the

1 government proved during the trial beyond a reasonable doubt
2 each element of that charge.

3 Keep in mind that you must give separate
4 consideration to the evidence about each individual
5 defendant. Each defendant is entitled to be treated
6 separately, and you must return a separate verdict for each
7 defendant. Also, keep in mind that you must consider
8 separately each crime charged against each individual
9 defendant and you must return a separate verdict for each of
10 those crimes charged.

11 There is no burden upon a defendant to prove that
12 he is innocent. Instead, the burden of proof remains on the
13 government throughout the trial.

14 Reasonable doubt is doubt based upon reason and
15 common sense and not doubt based on speculation. A
16 reasonable doubt may arise from careful and impartial
17 consideration of all of the evidence or from a lack of
18 evidence. Proof beyond a reasonable doubt is proof of such
19 a convincing character that a reasonable person, after
20 careful consideration, would not hesitate to rely and act
21 upon that proof in life's most important decisions. Proof
22 beyond a reasonable doubt is proof that leaves you firmly
23 convinced of the defendant's guilt. Proof beyond a
24 reasonable doubt does not mean proof beyond all possible
25 doubt.

1 Count 2 charges Defendants Thao and Kueng with
2 deprivation of civil rights under color of law. The crime
3 of deprivation of civil rights, as charged in Count 2 of the
4 indictment, has four essential elements, which are:

5 One, the defendant deprived George Floyd of a
6 right, privilege or immunity secured by the Constitution or
7 laws of the United States. I'll describe the right involved
8 in Count 2 in another instruction;

9 Two, the defendant acted willfully, that is, the
10 defendant committed such act with a bad purpose or improper
11 motive to disobey or disregard the law, specifically
12 intending to deprive the person of that right;

13 Three, the defendant acted under color of law; and

14 Four, George Floyd suffered bodily injury and/or
15 died as a result of the defendants' conduct.

16 If all of these elements have been proved beyond a
17 reasonable doubt as to a defendant, you must find that
18 defendant guilty of the crime charged in Count 2.

19 Otherwise, you must find that defendant not guilty of the
20 crime charged in Count 2.

21 The first element of Count 2 requires the
22 government to prove beyond a reasonable doubt that the
23 defendant deprived George Floyd of a right secured by the
24 United States Constitution.

25 Count 2 specifically charges that defendants Tou

1 Thao and J. Alexander Kueng deprived George Floyd of the
2 right to be free from an unreasonable seizure, which
3 includes the right to be free from the use of unreasonable
4 force by a police officer and the related duty of other
5 officers to intervene to stop the use of unreasonable force
6 if they have knowledge of the force and the means to
7 intervene. You are instructed that this right is one
8 secured by the Constitution of the United States.

9 To find the defendant violated Mr. Floyd's right
10 to be free from a police officer's use of unreasonable force
11 by failing to intervene, you must find the following:

12 One, that Derek Chauvin used objectively
13 unreasonable force against Mr. Floyd;

14 Two, that the defendant observed or otherwise knew
15 that unreasonable force was being used against Mr. Floyd;

16 Three, that the defendant had the opportunity and
17 means to intervene to stop the unreasonable force; and

18 Four, that the defendant failed to take reasonable
19 steps to do so.

20 To determine whether Derek Chauvin used
21 unreasonable force against George Floyd, you must evaluate
22 whether the force was objectively unreasonable in light of
23 the facts and circumstances as judged from the perspective
24 of a reasonable officer on the scene, without the benefit of
25 20/20 hindsight. When making this determination, you should

1 consider all the facts and circumstances, including the
2 relationship between the need for the use of force and the
3 amount of force used; the extent of George Floyd's injuries;
4 the effort, if any, made by the defendant to temper or to
5 limit the amount of force used; the severity of the crime or
6 security problem, if any, at issue on the scene; whether
7 George Floyd posed an immediate threat to the safety of the
8 officers or others; and whether George Floyd was actively
9 resisting or attempting to evade arrest. You must consider
10 whether a reasonable officer on the scene would have used
11 the same force under similar circumstances, and you should
12 keep in mind that the decision about how much force to use
13 often must be made in circumstances that are tense,
14 uncertain and rapidly changing.

15 If you find that Derek Chauvin used unreasonable
16 force on George Floyd, you must then determine whether the
17 defendant acted unconstitutionally in failing to act to stop
18 that force. It violates the Constitution for a police
19 officer to stand by and allow the unreasonable use of force
20 to occur in his presence if that officer had the opportunity
21 to stop the use of force. This means that if an officer
22 knows that a fellow officer is using unreasonable force and
23 has the opportunity to stop that officer from using such
24 force, he has a constitutional obligation to do so.

25 In order to find that any defendant failed to

1 intervene in violation of the Constitution, you must find
2 that the defendants saw Derek Chauvin use force, that the
3 defendant recognized that the use of such force was
4 unreasonable, that the defendant had a realistic opportunity
5 to prevent further harm from occurring and that the
6 defendant chose not to do so. If the defendant took
7 reasonable actions to stop the unreasonable force, he has
8 not violated the Constitution merely because the steps he
9 took were ultimately unsuccessful.

10 To make this determination, you should consider
11 all of the facts and circumstances. You must consider the
12 evidence separately as to Defendant Thao and Defendant
13 Kueng.

14 If you find that Derek Chauvin used unreasonable
15 force against George Floyd, that the defendant had a
16 realistic opportunity to intervene to stop the use of force
17 and that the defendant did not attempt to do so, then you
18 must find that defendant deprived George Floyd of his right
19 under the Constitution. Otherwise, you must find that the
20 defendant did not deprive George Floyd of this right.

21 Count 3 charges defendants Thao, Kueng and Lane
22 with deprivation of civil rights under color of law. The
23 crime of deprivation of civil rights, as charged in Count 3
24 of the indictment, has four essential elements, which are:

25 One, the defendant deprived George Floyd of a

1 right, privilege or immunity secured by the Constitution or
2 laws of the United States, specifically the right to due
3 process of law, which includes the right of a person in
4 police custody to be free from a police officer's deliberate
5 indifference to his serious medical needs;

6 Two, the defendant acted willfully, that is, the
7 defendant committed such act with a bad purpose or improper
8 motive to disobey or disregard the law, specifically
9 intending to deprive the person of that right;

10 Three, the defendant acted under color of law; and

11 Four, George Floyd suffered bodily injury and/or
12 died as a result of the defendants' conduct.

13 All of these elements have been proved beyond --
14 sorry. If all of these elements have been proved beyond a
15 reasonable doubt as to a defendant, you can find that
16 defendant guilty of the crime charged in Count 3.

17 Otherwise, you must find that defendant not guilty of the
18 crime charged in Count 3.

19 Count 3 charges defendants Tou Thao, J. Alexander
20 Kueng and Thomas Lane deprived Mr. Floyd of his right to due
21 process of law, which includes the right of a person in
22 police custody to be free from a police officer's deliberate
23 indifference to his serious medical needs. You are
24 instructed that this right is one secured by the United
25 States Constitution.

1 The first element of Count 3 requires the
2 government to prove beyond a reasonable doubt that the
3 defendant deprived George Floyd of this right. To find that
4 any defendant deprived Mr. Floyd of the right to be free
5 from deliberate indifference to his serious medical needs,
6 you must find:

7 One, that Mr. Floyd had an objectively serious
8 medical need;

9 Two, that the defendant actually knew that
10 Mr. Floyd had a serious medical need; and

11 Three, that the defendant disregarded that medical
12 need by failing to take reasonable measures to address it.

13 A serious medical need is one that has been
14 diagnosed by a physician as requiring treatment or one that
15 is so obvious that even a layperson would easily recognize
16 the necessity for a doctor's attention. You must consider
17 the evidence separately as to each defendant.

18 If you find that the government has proved these
19 elements beyond a reasonable doubt, you must find that the
20 first element of the offense charged in Count 3 is satisfied
21 as to that defendant. Otherwise, you must find that this
22 element is not satisfied.

23 The second element of Counts 2 and 3 requires the
24 government to prove beyond a reasonable doubt that the
25 defendant acted willfully, that is, with a bad purpose and

1 improper motive. To find that any defendant acted
2 willfully, it is not necessary for you to find the defendant
3 knew the specific constitutional provision or federal law
4 that his conduct violated. You may find that the defendant
5 acted willfully even if you find that he had no real
6 familiarity with the Constitution or with the particular
7 constitutional right involved. However, you must find that
8 the defendant had a specific intent to deprive the person of
9 a right protected by the Constitution or federal law.

10 The crimes charged in this case require proof of
11 specific intent before the defendant can be convicted.
12 Specific intent, as the term implies, means more than the
13 general intent to commit the act. To establish specific
14 intent, the government must prove the defendant knowingly
15 did an act which the law forbids, purposely intending to
16 violate the law. Such intent may be determined from all of
17 the facts and circumstances surrounding the case.

18 The third element of Counts 2 and 3 require the
19 government to prove beyond a reasonable doubt that defendant
20 was acting under color of law. The parties have stipulated
21 that they have -- that is, that they have agreed, that the
22 defendants were acting under color of law during the events
23 in question. You must therefore consider the third element
24 as proved.

25 The final element of Counts 2 and 3 requires the

1 government to prove beyond a reasonable doubt that the
2 offense resulted in bodily injury to and/or the death of
3 George Floyd. The government need not prove beyond a
4 reasonable doubt that both bodily injury and death resulted
5 from the defendant's conduct, but in order to find that the
6 fourth element of the offense is established, you must
7 unanimously agree that the government has proved one or both
8 results. You must consider the evidence separately as to
9 each defendant.

10 "Bodily injury" means (A) a cut, abrasion, bruise,
11 burn or disfigurement; (B) physical pain; (C) illness; (D)
12 impairment of a function of a bodily member, organ, mental
13 faculty; or (E) any other injury to the body, no matter how
14 temporary. The government need not prove that the defendant
15 intended for Mr. Floyd to suffer injury.

16 Because Counts 2 and 3 both charge that
17 Mr. Floyd's death resulted from the charged offense, if you
18 find a defendant guilty of one or more counts, you must also
19 determine if the government has proven beyond a reasonable
20 doubt that Mr. Floyd died as a result of that offense. But
21 the government need not prove that the defendant intended
22 for the victim to die. The government must prove that the
23 victim's death was a foreseeable result of the defendant's
24 willful deprivation of the victim's constitutional rights.

25 Willfulness, intent or knowledge may be proved

1 like anything else. You may consider any statements made
2 and acts done by the defendant and all the facts and
3 circumstances in evidence which may aid in a determination
4 of the defendant's willfulness, knowledge or intent.

5 You may, but are not required to, infer that a
6 person intends the natural and probable consequences of acts
7 knowingly done or knowingly omitted.

8 You have heard evidence of the training each
9 defendant received. This evidence has been admitted for a
10 limited purpose. You may use it only to determine whether
11 any defendant acted willfully, that is, with a bad purpose,
12 to violate a right protected by the Constitution of the
13 United States. It is, of course, wholly up to you to
14 determine whether any defendant acted inconsistently with
15 his training.

16 I caution you that an instance of inappropriate
17 behavior on the part of a police officer does not
18 necessarily rise to the level of a federal constitutional
19 violation. It is possible for a law enforcement officer to
20 act contrary to the officer's training, without violating
21 the United States Constitution, just as it is possible for
22 an officer to violate the Constitution without acting
23 inconsistently with his training.

24 In other words, if you determine that any
25 defendant acted contrary to the training he received, you

1 should consider that evidence only in determining whether
2 the defendant acted willfully and not consider this evidence
3 in determining whether his actions violated the Constitution
4 in the first instance.

5 Certain charts and summaries have been shown to
6 you in order to help explain the facts disclosed by the
7 books, records or other underlying evidence in the case.
8 These charts or summaries are used for convenience. They
9 are not themselves evidence or proof of any facts. If they
10 do not correctly reflect the facts shown by the evidence in
11 the case, you should disregard these charts and summaries
12 and determine the facts from the books, records or other
13 underlying evidence.

14 You have heard testimony about the character and
15 reputation of the defendants. You may consider that
16 evidence along with all of the other evidence in the case.

17 I didn't need to read that twice.

18 In conducting your deliberations and returning
19 your verdict, there are certain rules that you must follow.
20 And I'll list those rules for you now.

21 First, when you go to the jury room, you must
22 select one of your members as your foreperson. That person
23 will preside over your discussion and speak for you here in
24 court.

25 Second, it is your duty as jurors to discuss this

1 case with one another in the jury room. You should try to
2 reach agreement if you can do so without violence to
3 individual judgment, because the verdict, whether guilty or
4 not guilty, must be unanimous.

5 Each of you must make your own conscientious
6 decision, but only after you have considered all of the
7 evidence, discussed it fully with your fellow jurors and
8 listened to the views of your fellow jurors.

9 Do not be afraid to change your opinion if the
10 discussion persuades that you should, but do not come to a
11 decision simply because other jurors think it is right or
12 simply to reach a verdict.

13 Third, if any defendant is found guilty, the
14 sentence to be imposed is my responsibility. You may not
15 consider punishment in any way in deciding whether the
16 government has proved its case beyond a reasonable doubt.

17 Fourth, if you need to communicate with me during
18 your deliberations, you may send a note to me through the
19 court security officer, signed by one or more jurors. I
20 will respond as soon as possible, either in writing or
21 orally in open court. Remember that you should not tell
22 anyone, including me, how your votes stand numerically.

23 Fifth, your verdict must be based solely on the
24 evidence and on the law that I have given you in my
25 instructions. The verdict, whether guilty or not guilty,

1 must be unanimous. Nothing I have said or done is intended
2 to suggest what your verdict should be. That's entirely for
3 you to decide.

4 Finally, the verdict forms are simply the written
5 notice of the decision that you reach in the case. The
6 forms read as follows, and there are three forms in the
7 matter.

8 The first of these forms is United States of
9 America, plaintiff, versus Tou Thao, defendant. Verdict
10 Form. Question 1, We, the jury, find the defendant Tou
11 Thao, and a blank with the parenthesis of the words "guilty"
12 or "not guilty," of deprivation of rights under color of law
13 as charged in Count 2 of the indictment. When the jury has
14 reached a unanimous verdict as to that question, your
15 foreperson will insert either the word "guilty" or "not
16 guilty" on the line provided.

17 And then sort of like when you put the kids' swing
18 set together, when all else fails, read the directions. And
19 the directions are: If you find defendant Tou Thao guilty
20 of Count 2, then answer the following question. If you find
21 the defendant Tou Thao not guilty as to Count 2, skip to
22 question 3.

23 Then question 2 is, if you're answering this
24 question, We, the jury, unanimously find that the offense
25 charged in Count 2 resulted in the death of George Floyd.

1 And then there is a space for a "yes" or a "no." And when
2 you've reached -- if you are answering this question, if you
3 reached a unanimous verdict, your foreperson will check
4 either "yes" or "no."

5 And then question 3, which you will answer, We,
6 the jury, find the defendant Tou Thao, again a blank and a
7 space for "guilty" or "not guilty," of deprivation of rights
8 under color of law as charged in Count 3 of the indictment.
9 When you've reached a unanimous verdict as to that question,
10 your foreperson will write in the words "guilty" or "not
11 guilty."

12 And then again the direction: If you find
13 defendant Tou Thao guilty as to Count 3, then answer the
14 following question. If you find defendant Tou Thao not
15 guilty as to Count 3, your deliberations are complete. Have
16 your foreperson sign and date the form.

17 Now, if you're answering question 4, We, the jury,
18 unanimously find that the offense charged in Count 3
19 resulted in the death of George Floyd, again the space for a
20 "yes" or a "no." And when you reach a unanimous verdict as
21 to question no. 4, if you are answering that question, your
22 foreperson will mark the appropriate spot for the "yes" or a
23 "no."

24 When you've reached a unanimous verdict as to all
25 the questions that you are answering on this verdict form,

1 your foreperson will fill in the date and your foreperson
2 will sign the verdict form.

3 We then turn to the next verdict form, which is
4 United States of America versus J. Alexander Kueng.
5 Count 2, deprivation of rights under the color of law,
6 failure to intervene. Instruction: Write in "not guilty"
7 or "guilty" to the blank space below. We, the jury,
8 unanimously find the defendant J. Alexander Kueng, now
9 there's a blank space, of the crime of deprivation of rights
10 under color of law as charged in Count 2 of the indictment.
11 Now, when you reach a unanimous decision as to this
12 question, your foreperson will fill in the form "guilty" or
13 "not guilty" as to that question.

14 Then after that there is the instruction. If you
15 find defendant J. Alexander Kueng guilty as to Count 2, then
16 check "yes" or "no" below. Otherwise, skip to Count 3.

17 And then the question is, We, the jury,
18 unanimously find that the offense charged in Count 2
19 resulted in the death of George Floyd with a "yes" or a
20 "no." If you are answering that question, it will be marked
21 when you reach a unanimous verdict as to that question.

22 We then turn to Count 3, deprivation of rights
23 under color of law, deliberate indifference. The
24 instruction is to write "not guilty" or "guilty" in the
25 blank space below. And then the question is, We, the jury,

1 unanimously find the defendant J. Alexander Kueng, with a
2 space to write the words "guilty" or "not guilty," of the
3 crime of deprivation of rights under color of law as charged
4 in Count 3 of the indictment. When you've reached a
5 unanimous verdict as to that question, your foreperson will
6 write in the appropriate words of "guilty" or "not guilty"
7 as to -- on the blank provided.

8 Then follow the instruction. If you find
9 defendant J. Alexander Kueng guilty as to Count 3, then
10 check "yes" or "no" below. Otherwise, skip the question and
11 sign and date the verdict form.

12 And then if you're answering that final question,
13 We, the jury, unanimously find that the offense charged in
14 Count 3 resulted in the death of George Floyd, answer "yes"
15 or "no" and -- if you're answering that question.

16 And then, finally, when you have reached a
17 unanimous verdict to all the questions that you are
18 answering, your foreperson will date and sign the verdict
19 form as to J. Alexander Kueng.

20 Then, finally, in the matter of the United States
21 of America versus Thomas Kiernan Lane. Count 3, deprivation
22 of rights under color of law, deliberate indifference. The
23 instruction is, Write "not guilty" or "guilty" on the blank
24 space below. We, the jury, unanimously find the defendant
25 Thomas Kiernan Lane, and then the blank for writing in the

1 words "not guilty" or "guilty," of the crime of deprivation
2 of rights under color of law as charged in Count 3 of the
3 indictment. When you've reached a unanimous verdict as to
4 that question, your foreperson will fill in the words of
5 "not guilty" or "guilty."

6 And then when you completed that, if you find
7 defendant Thomas Kiernan Lane guilty of Count 3, then check
8 "yes" or "no" below. Otherwise, skip the question and sign
9 and date the verdict form.

10 And then, We, the jury, unanimously find the
11 offense charged in Count 3 resulted in the death of George
12 Floyd with the words "yes" or "no," upon you reaching a
13 unanimous verdict, if you are answering the question. And
14 when you've answered the question that you are answering on
15 that verdict form with a unanimous decision, you will date
16 and your foreperson will sign the verdict form and return to
17 open court.

18 Take these forms to the jury room; and when each
19 of you has agreed on the verdict, your foreperson will fill
20 in the form, sign and date it, and advise the court security
21 officer that you're ready to return to the courtroom.

22 Counsel, may we have a sidebar conference, please?

23 **(At sidebar)**

24 THE COURT: Counsel, may the record reflect that
25 the court has considered all previously submitted

1 instructions, whether orally or in writing, and has
2 determined these instructions in accordance with those
3 instructions that have just been read and maintains its
4 decision accordingly.

5 Is there anything further to come to our
6 attention?

7 MS. BELL: No, Your Honor.

8 MR. ROBERT PAULE: Your Honor, Robert Paule. The
9 only thing I would ask is that when the court was reading
10 the verdict forms and when it read Mr. Thao's verdict, it
11 started with guilty or not guilty. And the other verdict
12 forms started with not guilty or guilty. I'd just ask that
13 those be made consistent, if they are not.

14 THE COURT: Counsel, your point is well-taken. I
15 have just discovered -- I hadn't done this before -- I've
16 just discovered that the verdict form that I read was a
17 previously drafted verdict form that we had drafted in my
18 office. It is not -- and I did not read the form that had
19 been drafted by you.

20 If you don't mind, I would substitute the form
21 that you drafted, which the language is virtually exactly
22 the same, I'll substitute the form that you drafted and
23 present it to the jury simply because that would give
24 uniformity.

25 MR. ROBERT PAULE: I think that's --

1 THE COURT: Any objection to doing that?

2 MR. ROBERT PAULE: No. I think that's
3 appropriate, Your Honor.

4 THE COURT: Okay.

5 MS. BELL: That's fine, Your Honor.

6 THE COURT: Okay. Anything further?

7 MR. GRAY: No, Your Honor.

8 THE COURT: If not, we will swear the marshal.
9 And before I do that, I will, I will send the alternates
10 out. I'm not going to release the alternates, but I will
11 send them out. And then we will swear the marshal, and let
12 them commence deliberations. Thank you.

13 MR. GRAY: Thank you.

14 **(In open court)**

15 THE COURT: First of all, the two of you as
16 alternates, I'm going to ask that you step out at this
17 point, go to the jury room, get any personal effects that
18 you might have, come back to my office, and I'd like to chat
19 with you for a few minutes. I am not releasing you from
20 potential obligations with respect to the case at this time,
21 but as alternates you may step out at this point. Thank you
22 very much.

23 (Alternate jurors exit the courtroom.)

24 THE COURT: Then, members of the jury, you will be
25 released momentarily to commence your, you will be released

1 momentarily to commence your deliberations.

2 When you step out, you will not have immediately
3 all of the exhibits with respect to the matter simply
4 because they need to be inventoried and double-checked to
5 make sure that we've got the right exhibits coming to you.
6 And at that point they will come to you for your
7 consideration.

8 In addition to that, a representative of the IT
9 department is here, and they will come to your deliberation
10 room to show you how to be tech savvy for watching exhibits
11 that are in electronic form. Some will be in electronic
12 form; some will be in paper. And I have to quickly tell you
13 that there's no difference in the exhibits. They're equally
14 important whether they're in electronic form or in paper
15 form.

16 Also, at the time that you get these, because we
17 caught a typo on the verdict forms, you won't get the
18 verdict forms right now. You will get them in just a few
19 minutes.

20 And, finally, over here we have copies of the
21 instructions that I've just read. This is the original set
22 of the instructions, but there are additional copies of the
23 instructions for each of you.

24 And with that, if the marshal would come forward
25 to be sworn, we will do that duty and then you can commence

1 your deliberations.

2 You do solemnly swear that you will, unless
3 otherwise ordered by the court, keep this jury committed to
4 your charge together in some safe and convenient place, that
5 you will permit no one to make any communication with them,
6 nor make any yourself, except to ask them if they have
7 agreed upon a verdict, nor will you disclose the verdict,
8 nor the state of their deliberations, until they are
9 returned into court and are discharged by order of the
10 court, so help you God.

11 COURT SECURITY OFFICER: I do.

12 THE COURT: Okay. Thank you. And with that, I'll
13 give you the instructions and copies of the instructions.

14 And the jury may be excused at this time to
15 commence your deliberations.

16 (9:53 a.m.)

17 **IN OPEN COURT**

18 **(JURY NOT PRESENT)**

19 THE COURT: Okay. I now have, Ms. Paule, the -- I
20 have a blank sheet of paper too, but I think I have your
21 exhibit list here, and we'll fill that in.

22 Counsel, I'm going to ask that you please review
23 the exhibits. Make sure that we have all exhibits that have
24 been appropriately received. Make sure that we have them
25 either in paper or in electronic form, and I think it makes

1 no great difference whichever we have them in one or the
2 other.

3 And with that, I would believe that we can stand
4 in recess. Okay.

5 MR. GRAY: Do you know if they will be
6 deliberating till 5, 6 or --

7 THE COURT: Till about 5 o'clock.

8 MR. GRAY: All right. Thank you, judge.

9 THE COURT: To defense counsel, the government's
10 got an office here in the building, but how long does it
11 take you to get here with your clients?

12 MR. GRAY: Are you looking at me or --

13 THE COURT: I'm looking at any and all of you.

14 MR. ROBERT PAULE: Your Honor, if I could address
15 it. I think once we receive notice we should be able to
16 have our -- we should be in the building within about
17 15 minutes.

18 THE COURT: Okay. Let's plan that. From about
19 15 minutes from the time that, that we receive notice that
20 there will be a verdict, we will gather for that.

21 There may be some motions that need to come to the
22 attention of the court at this time too. Should we hear any
23 of those? Are there any that are appropriate at this point?

24 MS. BELL: I don't believe so, Your Honor.

25 THE COURT: Okay. Nothing from the defense?

1 Okay.

2 MR. GRAY: Have you decided my motions real quick
3 yet, Your Honor?

4 THE COURT: No, I've not.

5 MR. GRAY: Okay.

6 THE COURT: Okay.

7 MR. PLUNKETT: Your Honor, I was just going to
8 make the final record on -- if I may.

9 THE COURT: Certainly.

10 MR. PLUNKETT: Thank you, Your Honor. Throughout
11 the trial I've marked the record at several points in time.

12 THE COURT: You can be seated. There's no -- you
13 don't have to stand.

14 MR. PLUNKETT: The record has been marked at
15 several points in time, and I think that early on in the
16 trial, a month ago, you know, we were making motions for,
17 you know, a new trial. On a routine basis I think I told
18 the court, well, I'm just going to keep marking the record.
19 We've done that. All of the defense attorneys have done
20 that at various times. And so at this point I'm remaking my
21 motion for a mistrial.

22 THE COURT: Okay. Well, there have been motions
23 for mistrial. There have been motions for prosecutorial
24 misconduct. I think that's the type of thing that either
25 should be submitted in writing, and I'm going to give you

ten days to do that or they would be waived. If they do come forward in written form, the government will then have a week after that to respond, and defense would have another week for a reply brief, if that becomes appropriate.

And I think I will leave it to your discretion, once you actually look at the transcript and make the decisions, with respect to each of those two subjects.

MR. PLUNKETT: Thank you, Your Honor.

THE COURT: Okay. Let's let you go ahead and work on getting the agreement, and let me have just a few minutes with Mr. Thao's exhibit list here to see what we can come up with.

Okay. With your permission, we've copied your verdict form that you'd agreed to and we will send it to the jury.

MR. PLUNKETT: Your Honor, at this time I'm going to excuse myself from the court. I'm going to run to my office and bring back some of the exhibits to give to the jury.

THE COURT: Oh, okay.

MR. PLUNKETT: Thank you.

(Court adjourned at 10:00 a.m., 02/23/2022.)

I, Renee A. Rogge, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Certified by: /s/Renee A. Rogge
Renee A. Rogge, RMR-CRR